

DEPARTMENT OF STATE REVENUE**LETTER OF FINDINGS NUMBER: 98-0118****Income Tax****Fiscal Years Ending 9/30/94, 9/30/95, 9/30/96**

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ISSUE**I. Tax Administration – Penalty**

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2(b)

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

The taxpayer is a subsidiary of a German-owned entity. The taxpayer primarily sells steel for construction use such as rebar and steel plate. The majority of its sales are for resale. In the audit report, adjustments were made to the taxpayer's adjusted gross income tax and supplemental net income tax liability based on the following: (1) the add-back of property taxes not added back on the original return, (2) the reclassification of non-business income to business income, and (3) the disallowance of a credit taken on the original tax return for an estimated payment that was never actually made.

I. Tax Administration – Penalty**DISCUSSION**

The taxpayer protests the 10% negligence penalty that was assessed in the audit report, as they relied on the expertise of an outside accounting firm in the preparation of their corporate income tax returns.

As stated by Administrative Rule 45 IAC 15-11-2(b), "'Negligence' on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer".

FINDING

The taxpayer's protest is respectfully denied. All of the adjustments that were made in the audit report were a result of violations of clearly written citations in both the Indiana Code and the Indiana Administrative Rules (regulations). Reliance on an outside accounting firm is not sufficient cause for the abatement of a penalty resulting from a lack of reasonable care.